

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Petitioner,)	
)	
v.)	No. _____
)	
LEVEL PROPANE GASES, INC.,)	
an Ohio corporation,)	
)	
Respondent.)	
)	

PETITION

Paul G. Summers, Attorney General and Reporter for the State of Tennessee, (hereinafter “Attorney General”), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter “the Act”), and would respectfully show the Court as follows:

1. The Attorney General, acting pursuant to the Act, has investigated certain acts and practices of Level Propane Gas, Inc. (hereinafter “Respondent”). Upon completion of such investigation, the Attorney General has determined that certain of Respondent’s acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of the Tennessee Consumer Protection Act of 1977, codified at Tenn. Code Ann. § 47-18-101, *et seq.* More specifically, Respondent’s conduct is violative of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(9), (b)(12) and (b)(27).
2. Based upon the investigation of Respondent, the Attorney General alleges the following:

(A) In its marketing and sale of propane, Petitioner either directly or through implication represents that the consumer will be charged a "price per gallon" for the propane.

(B) Petitioner has advertised that its "price per gallon" was less than other propane companies due to its ability to purchase propane at lower prices during the non-heating season and store such propane for later use.

- (C) Petitioner has advertised that consumers may lock-in a "level" price for propane for a stated period.
- (D) In a letter to consumers in April 2000, in order to thank them for their loyalty to the company, Petitioner advised the consumers that the consumers' propane price would be guaranteed until the Spring of 2001. Affirmative action by the consumer was only requested either to extend the price guarantee "for another full year" into the Spring of 2002, or to enroll in a "pre-buy" program providing additional discounts.
- E. In a letter to consumers in September 2000, Petitioner informed consumers that it would not guarantee propane prices through the Spring of 2001 unless the consumers had taken affirmative action to lock-in the price through Spring 2002 or enrolled in a pre-buy program prior to September 2000.
- F. In most instances, Level has required its consumers to enter into a written agreement for the purchase of propane titled "Contract for Propane Service and Equipment Lease/Sale." Level offers Pre-Buy Agreements, Lock-in Agreements and Market-Price Agreements subject to delivery of propane as either a Courtesy Fill consumer or as a Will Call consumer.
- G. Level's delivery drivers have given the Contract to consumers at the time of installation of the propane tank.
- H. After consumers sign the Contract with Level, they discover that they are obligated to pay an underutilization fee if they do not use a set amount of propane within a certain time period.
- I. The front of the Contract sets forth the following terms:
 - a. Will Call Consumer is quoted price plus additional rate per gallon. C.O.D. is quoted price plus additional rate per gallon. Request for delivery of less than a full fill may be assessed an additional rate per gallon.
 - b. TERM - This contract shall commence on the date executed by Level's authorized representative (effective date), and shall remain in effect for a term of one (1) year (original term) and shall be automatically renewed for successive one (1) year periods until terminated.
 - c. MINIMUM USAGE - In consideration for the services provided under this contract by Level to consumer, consumer guarantees that he/she/it shall purchase the quantity of propane as set forth in the following schedule during the twelve (12) month period commencing July 1 and ending June 30 ("minimum quantity").
- J. Consumers cannot cancel the Contract during the term of the Contract.
- K. At the end of the term, Petitioner unilaterally increases the price per gallon for the propane without obtaining the consumer's consent to the increase before Petitioner refills the tank at the higher price.
- L. If consumers do not want to pay the increased price to renew their contracts, consumers must then send a written notice to Petitioner terminating the contract; otherwise, consumers must pay for the increased price per gallon.

- M. If consumers terminate their Contract instead of renewing it, they are charged additional fees. The amount of these additional fees discourages consumers from terminating the Contract.

3. Respondent's position to the above allegations is set forth in paragraphs 16 and 17 of the attached Assurance of Voluntary Compliance.

4. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division of Consumer Affairs (hereinafter "Division") has approved, the attached Assurance of Voluntary Compliance.

5. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

6. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays:

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, do hereby certify that on _____, 2001, a true and exact copy of the foregoing was mailed, postage prepaid, via U.S. Mail to Mr. Robert E. Cooper, Jr., Counsel for Level Propane Gases, Inc., Bass, Berry & Sims, P.L.C., 315 Deaderick Street, Suite 2700, Nashville, Tennessee 37238-0002.

DANA M. AUSBROOKS
Assistant Attorney General

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